

AMENDED IN SENATE JUNE 13, 2000
AMENDED IN ASSEMBLY APRIL 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2284

Introduced by Assembly Member Dutra

February 24, 2000

An act to amend ~~Section~~ Sections 10229, 10232.2, 10232.25, and 10232.5 of the Business and Professions Code, to amend Sections 2924g, 2924j, 2941, and 2943 of the Civil Code, and to amend Section 17320 of the Financial Code, relating to ~~mortgages~~ real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2284, as amended, Dutra. Mortgages: reconveyances escrow companies.

(1) *The Real Estate Law requires a real estate broker to file certain information with the Real Estate Commissioner relative to the conducting of a transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, otherwise known as multilender transactions, as specified. Existing law provides that a violation of the Real Estate Law is a crime.*

This bill would expand the nature of the information that is required to be filed with the commissioner in this regard. Because a violation of the bill's requirements would be a

crime, this bill would impose a state-mandated local program by expanding the definition of a crime.

(2) The Real Estate Law requires a real estate broker engaging in certain mortgage-related activities to report certain information to the Department of Real Estate, and authorizes the department to conduct a trust fund examination of a broker who fails to submit the required information. The department may charge a broker an amount equal to 1.5 times the cost of the examination and other related activities.

This bill would authorize the commissioner to suspend or revoke a broker's license, or deny renewal of a broker's license, if the broker fails to pay the amount charged for this purpose, as specified. This bill would enact other related provisions.

(3) Existing law provides for the use of a mortgage or a deed of trust as security in a transfer of real property, provides for a power of sale upon a breach of the obligation that a mortgage or a deed of trust secures, and establishes certain procedures that a mortgagee or trustee must follow when exercising a power of sale, including the mailing, publication, and delivery of notices. Existing law provides that a sale of property pursuant to a power of sale under a mortgage or deed of trust may be postponed and establishes procedures for giving notice of the postponement and setting a new date of sale, among other things. Existing law also provides that, after specified postponements, a sale described above shall be conducted no sooner than 7 days after the earlier of specified events.

This bill would provide that notwithstanding the above, the sale shall be conducted no sooner than the expiration of a specified stay.

(4) Existing law requires that, except as provided, notices be sent to certain parties following a trustee's sale of property under a deed of trust if proceeds remain after specified payments.

This bill would revise these provisions to establish that sending the notices by first-class mail, rather than by registered or certified mail, satisfies the requirements described above.



(5) Existing law provides that when an obligation secured by a deed of trust has been satisfied, the beneficiary, or its assignee, is required to execute and deliver to the trustee the original note and deed of trust and request a reconveyance. The trustee is then required to execute and record the full reconveyance, except as provided, and deliver the note and deed of trust to the person making the request. Existing law further provides that the trustee, beneficiary, or mortgagee may charge a reasonable fee for all services involved in the preparation, execution, and recordation of the full reconveyance.

This bill would require that a fee charged by the trustee, beneficiary, or mortgagee for services connected with the full reconveyance be held in escrow until the reconveyance has been executed and recorded.

(6) *Existing law allows certain parties to a mortgage or deed of trust to request beneficiary statements or payoff demand statements, as defined, that contain specified information.*

This bill would provide that preparation and delivery of a beneficiary statement or a payoff demand statement does not change the date of sale established pursuant to a power of sale contained in a deed of trust or mortgage, as specified.

(7) *The Escrow Law generally provides for regulation of escrow agents by the Department of Corporations. Existing law provides for creation of the Fidelity Corporation as a nonprofit mutual benefit corporation to indemnify escrow agents that are members of the corporation against loss, as specified. The expenses of the corporation are paid from various funds, in which are deposited fees and assessments collected from members.*

This bill would provide for refunds of a member's membership fee under certain circumstances and within a specified timeframe.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes.
State-mandated local program: ~~no~~—yes.

The people of the State of California do enact as follows:

SECTION 1. *Section 10229 of the Business and Professions Code is amended to read:*

10229. Any transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, shall comply with all of the following, except as provided in paragraph (4) of subdivision (i), the terms “sale” and “offer to sell,” as used in this section, shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction:

(a) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

() Original Notice () Amended Notice

1. Name of Broker conducting transaction under Section 10229:

- 1 2. *Broker license identification number:* _____
2
3 3. *List the month the fiscal year ends:* _____
4
5 4. *Broker's telephone number:* _____
6
7 ~~2.~~
8 5. Firm name (if different from "1"):
9
10 _____
11
12 ~~3.~~
13 6. Street address (main location):
14
15 _____
16 # and Street City State ZIP Code
17
18 ~~4.~~
19 7. Mailing address (if different from ~~"3"~~ "6"):
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21 _____
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5.

8. Servicing Agent: Identify *by name, address, and telephone number* the person or ~~persons~~ *entity* who will act as the servicing agent in transactions pursuant to Section 10229 (including the undersigned Broker if that is the case):

9. Total number of multilender notes arranged: _____

10. Total number of interests sold to investors on the multilender's notes: _____

6.

11. Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (j) of Section 10229).

CHECK ONLY ONE OF THE FOLLOWING:

() The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total number of Investors due Payments Last Fiscal Quarter: _____

() The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

7.

12. Signature. The contents of this notice are true and correct.

Date

Type Name of Broker

Signature of Broker or of Designated Officer
of Corporate Broker

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED
BY THE BROKER WITHIN 30 DAYS OF ANY
MATERIAL CHANGE IN THE INFORMATION
REQUIRED TO BE SET FORTH HEREIN.

(b) All advertising employed for transactions under
this section shall (1) show the name of the broker and (2)
comply with Section 10235 of the Business and Professions
Code and Sections 260.302 and 2848 of Title 10 of the
California Code of Regulations. Brokers and their agents
are cautioned that a reference to a prospective investor
that a transaction is conducted under this section may be
deemed misleading or deceptive if this representation
may reasonably be construed by the investor as an
implication of merit or approval of the transaction.

(c) The real property directly securing the notes or
interests is located in this state, the note or notes are not
by their terms subject to subordination to any
subsequently created deed of trust upon the real
property, and the note or notes are not promotional notes
secured by liens on separate parcels of real property in
one subdivision or in contiguous subdivisions. For
purposes of this subdivision, a promotional note means a
promissory note secured by a trust deed, executed on
unimproved real property or executed after construction

1 of an improvement of the property but before the first
2 purchase of the property as so improved, or executed as
3 a means of financing the first purchase of the property as
4 so improved, that is subordinate, or by its terms may
5 become subordinate, to any other trust deed on the
6 property. However, the term “promotional note” does
7 not include either of the following:

8 (1) A note that was executed in excess of three years
9 prior to being offered for sale.

10 (2) A note secured by a first trust deed on real
11 property in a subdivision that evidences a bona fide loan
12 made in connection with the financing of the usual cost
13 of the development in a residential, commercial, or
14 industrial building or buildings on the property under a
15 written agreement providing for the disbursement of the
16 loan funds as costs are incurred or in relation to the
17 progress of the work and providing for title insurance
18 ensuring the priority of the security as against mechanic’s
19 and materialmen’s liens or for the final disbursement of
20 at least 10 percent of the loan funds after the expiration
21 of the period for the filing of mechanic’s and
22 materialmen’s liens.

23 (d) (1) The notes or interests are sold by or through
24 a real estate broker, as principal or agent. At the time the
25 interests are originally sold or assigned, neither the
26 broker nor an affiliate of the broker shall have an interest
27 as owner, lessor, or developer of the property securing
28 the loan, or any contractual right to acquire, lease, or
29 develop the property securing the loan. This provision
30 does not prohibit a broker from conducting the following
31 transactions if, in either case, the disclosure statement
32 furnished by the broker pursuant to subdivision (k)
33 discloses the interest of the broker or affiliate in the
34 transaction and the circumstances under which the
35 broker or affiliate acquired the interest:

36 (A) A transaction in which the broker or an affiliate of
37 the broker is acquiring the property pursuant to a
38 foreclosure under, or sale pursuant to, a deed of trust
39 securing a note for which the broker is the servicing agent
or that the broker sold to the holder or holders.

(B) A transaction in which the broker or an affiliate of the broker is reselling from inventory property acquired by the broker pursuant to a foreclosure under, or sale pursuant to, a deed of trust securing a note for which the broker is the servicing agent or that the broker sold to the holder or holders.

(2) For the purposes of this subdivision, the following definitions apply:

(A) "Broker" means a person licensed as a broker under this part.

(B) "Affiliate" means a person controlled by, controlling, or under common control with, the broker.

(e) (1) The notes or interests shall not be sold to more than 10 persons, each of whom meets one or both of the qualifications of income or net worth set forth below and signs a statement, which shall be retained by the broker for four years, conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true:

() My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

() My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

1 (4) A retirement plan, trust, business trust,
2 corporation, or other entity that is wholly owned by an
3 individual and the individual's spouse or the individual's
4 dependents, or any combination thereof, shall not be
5 counted separately from the individual, but the
6 investments of these entities shall be aggregated with
7 those of the individual for the purposes of the statement
8 required by paragraph (1). If the investments of any
9 entities are required to be aggregated under this
10 subdivision, the adjusted gross income or net worth of
11 these entities may also be aggregated with the net worth,
12 income, or both, of the individual.

13 (5) The "institutional investors" enumerated in
14 subdivision (i) of Section 25102 or subdivision (c) of
15 Section 25104 of the Corporations Code, or in a rule
16 adopted pursuant thereto, shall not be counted.

17 (f) The notes or interests of the purchasers shall be
18 identical in their underlying terms, including the right to
19 direct or require foreclosure, rights to and rate of interest,
20 and other incidents of being a lender, and the sale to each
21 purchaser pursuant to this section shall be upon the same
22 terms, subject to adjustment for the face or principal
23 amount or percentage interest purchased and for interest
24 earned or accrued. This subdivision does not preclude
25 different selling prices for interests to the extent that
26 these differences are reasonably related to changes in the
27 market value of the loan occurring between the sales of
28 these interests. The interest of each purchaser shall be
29 recorded.

30 (g) (1) Except as provided in paragraph (2), the
31 aggregate principal amount of the notes or interests sold,
32 together with the unpaid principal amount of any
33 encumbrances upon the real property senior thereto,
34 shall not exceed the following percentages of the current
35 market value of the real property, as determined in
36 writing by the broker or appraiser pursuant to Section
10232.6, plus the amount for which the payment of
principal and interest in excess of the percentage of
current market value is insured for the benefit of the



holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

- (A) Single-family residence, owner occupied 80%
- (B) Single-family residence, not owner occupied 75%
- (C) Commercial and income-producing properties 65%
- (D) Single family residentially zoned lot or parcel which
has installed offsite improvements including
drainage, curbs, gutters, sidewalks, paved roads, and
utilities as mandated by the political subdivision
having jurisdiction over the lot or parcel 65%
- (E) Land that has been zoned for (and if required,
approved for subdivision as) commercial or
residential development 50%
- (F) Other real property 35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker's record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (k).

1 (3) A copy of the appraisal or the broker's evaluation
2 shall be delivered to each purchaser. The broker shall
3 advise purchasers of their right to receive a copy. For
4 purposes of this paragraph, "appraisal" means a written
5 estimate of value based upon the assembling, analyzing,
6 and reconciling of facts and value indicators for the real
7 property in question. A broker shall not purport to make
8 an appraisal unless the person so employed is qualified on
9 the basis of special training, preparation, or experience.

10 (h) The documentation of the transaction shall
11 require that (1) a default upon any interest or note is a
12 default upon all interests or notes and (2) the holders of
13 more than 50 percent of the record beneficial interests of
14 the notes or interests may govern the actions to be taken
15 on behalf of all holders in accordance with Section 2941.9
16 of the Civil Code in the event of default or foreclosure for
17 matters that require direction or approval of the holders,
18 including designation of the broker, servicing agent, or
19 other person acting on their behalf, and the sale,
20 encumbrance, or lease of real property owned by the
21 holders resulting from foreclosure or receipt of a deed in
22 lieu of foreclosure. The terms called for by this subdivision
23 may be included in the deed of trust, in the assignment
24 of interests, or in any other documentation as is necessary
25 or appropriate to make them binding on the parties.

26 (i) (1) The broker shall not accept any purchase or
27 loan funds or other consideration from a prospective
28 lender or purchaser, or directly or indirectly cause the
29 funds or other consideration to be deposited in an escrow
30 or trust account, except as to a specific loan or note
31 secured by a deed of trust that the broker owns, is
32 authorized to negotiate, or is unconditionally obligated to
33 buy.

34 (2) All funds received by the broker from the
35 purchasers or lenders shall be handled in accordance with
36 Section 10145 for disbursement to the persons thereto
37 entitled upon recordation of the interests of the
38 purchasers or lenders in the note and deed of trust. No
39 provision of this section shall be construed as modifying
40 or superseding applicable law regulating the escrow

1 holder in any transaction or the handling of the escrow
2 account.

3 (3) The books and records of the broker or servicing
4 agent, or both, shall be maintained in a manner that
5 readily identifies transactions under this section and the
6 receipt and disbursement of funds in connection with
7 these transactions.

8 (4) If required by paragraph (3) of subdivision (j), the
9 review by the independent certified public accountant
10 shall include a sample of transactions, as reflected in the
11 records of the trust account required pursuant to
12 paragraph (1) of subdivision (j), and the bank statements
13 and supporting documents. These documents shall be
14 reviewed for compliance with this section with respect to
15 the handling and distribution of funds. The sample shall
16 be selected at random by the accountant from all these
17 transactions and shall consist of the following: (A) three
18 sales made or 5 percent of the sales made pursuant to this
19 section during the period for which the examination is
20 conducted, whichever is greater, and (B) 10 payments
21 processed or 2 percent of payments processed under this
22 ~~exemption~~ section during the period for which the
23 examination is conducted, whichever is greater. The
24 transaction that constitutes a “sale,” for purposes of this
25 subdivision, is the series of transactions by which a series
26 of notes of a maker, or the interests in the note of a maker,
27 are sold or issued to their various purchasers under this
28 section, including all receipts and disbursements in that
29 process of funds received from the purchasers or lenders.
30 The transaction that constitutes a “payment,” for the
31 purposes of this subdivision, is the receipt of a payment
32 from the person obligated on the note or from some other
33 person on behalf of the person so obligated, including the
34 broker or servicing agent, and the distribution of that
35 payment to the persons entitled thereto. If a payment
36 involves an advance paid by the broker or servicing agent
37 as the result of a dishonored check, the inspection shall
38 identify the source of funds from which the payment was
39 made or, in the alternative, the steps that are reasonably
40 necessary to determine that there was not a disbursement

1 of trust funds. The accountant shall inspect for
2 compliance with the following specific provisions of this
3 section: paragraphs (1), (2), and (3) of subdivision (i)
4 and paragraphs (1) and (2) of subdivision (j).

5 (5) Within 30 days of the close of the period for which
6 the report is made, or within any additional time as the
7 commissioner may in writing allow in a particular case,
8 the accountant shall forward to the broker or servicing
9 agent, as the case may be, and to the commissioner, the
10 report of the accountant, stating that the inspection was
11 performed in accordance with this section, listing the
12 sales and the payments examined, specifying the nature
13 of the deficiencies, if any, noted by the accountant with
14 respect to each sale or payment, together with any
15 further information as the accountant may wish to
16 include, such as corrective steps taken with respect to any
17 deficiency so noted, or stating that no deficiencies were
18 observed. If the broker meets the threshold criteria of
19 Section 10232, the report of the accountant shall be
20 submitted as part of the quarterly reports required under
21 Section 10232.25.

22 (j) The notes or interests shall be sold subject to a
23 written agreement that obligates a licensed real estate
24 broker, or a person exempted from the licensing
25 requirement for real estate brokers under Chapter 3
26 (commencing with Section 10130) of Part 1 of Division 4,
27 to act as agent for the purchasers or lenders to service the
28 note or notes and deed of trust, including the receipt and
29 transmission of payments and the institution of
30 foreclosure proceedings in the event of a default. A copy
31 of this servicing agreement shall be delivered to each
32 purchaser. The broker shall offer to the lenders or
33 purchasers the services of the broker or one or more
34 affiliates of the broker, or both, as servicing agent for each
35 transaction conducted pursuant to this section. The
36 agreement shall require all of the following:

37 (1) (A) That payments received on the note or notes
38 be deposited immediately to a trust account maintained
39 in accordance with this section and with the provisions for
trust accounts of licensed real estate brokers contained in



1 Section 10145 and Article 15 (commencing with Section
2 2830.1) of Chapter 6 of Title 10 of the California Code of
3 Regulations.

4 (B) That payments deposited pursuant to
5 subparagraph (A) shall not be commingled with the
6 assets of the servicing agent or used for any transaction
7 other than the transaction for which the funds are
8 received.

9 (2) That payments received on the note or notes shall
10 be transmitted to the purchasers or lenders pro rata
11 according to their respective interests within 25 days
12 after receipt thereof by the agent. If the source for the
13 payment is not the maker of the note, the agent shall
14 inform the purchasers or lenders of the source for
15 payment. A broker or servicing agent who transmits to
16 the purchaser or lenders the broker's or servicing agent's
17 own funds to cover payments due from the borrower but
18 unpaid as a result of a dishonored check may recover the
19 amount of the advances from the trust fund when the past
20 due payment is received. However, this section does not
21 authorize the broker, servicing agent, or any other person
22 to issue, or to engage in any practice constituting, any
23 guarantee or to engage in the practice of advancing
24 payments on behalf of the borrower.

25 (3) If the broker, directly or through an affiliate, is the
26 servicing agent for notes or interests sold pursuant to this
27 section upon which the payments due during any period
28 of three consecutive months in the aggregate exceed one
29 hundred twenty-five thousand dollars (\$125,000) or the
30 number of persons entitled to the payments exceeds 120,
31 the trust account or accounts of that broker or affiliate
32 shall be inspected by an independent certified public
33 accountant at no less than three-month intervals during
34 the time the volume is maintained. Within 30 days after
35 the close of the period for which the review is made, the
36 report of the accountant shall be forwarded as provided
37 in paragraph (5) of subdivision (i). If the broker is
38 required to file an annual report pursuant to subdivision
39 (n) or Section 10232.2, the quarterly report pursuant to
40 this subdivision need not be filed for the last quarter of the

1 year for which the annual report is made. For the
2 purposes of this subdivision, an affiliate of a broker is any
3 person controlled by, controlling, or under common
4 control with the broker.

5 (4) Unless the servicing agent will receive notice
6 pursuant to Section 2924b of the Civil Code, the servicing
7 agent shall file a request for notice of default upon any
8 prior encumbrances and promptly notify the purchasers
9 or lenders of any default on the prior encumbrances or on
10 the note or notes subject to the servicing agreement.

11 (5) The servicing agent shall promptly forward copies
12 of the following to each purchaser or lender:

13 (A) Any notice of trustee sale filed on behalf of the
14 purchasers or lenders.

15 (B) Any request for reconveyance of the deed of trust
16 received on behalf of the purchasers or lenders.

17 (k) The broker shall disclose in writing to each
18 purchaser or lender the material facts concerning the
19 transaction on a disclosure form adopted or approved by
20 the commissioner pursuant to Section 10232.5, subject to
21 the following:

22 (1) The disclosure form shall include a description of
23 the terms upon which the note and deed of trust are being
24 sold, including the terms of the undivided interests being
25 offered therein, including the following:

26 (A) In the case of the sale of an existing note:

27 (i) The aggregate sale price of the note.

28 (ii) The percent of the premium over or discount from
29 the principal balance plus accrued but unpaid interest.

30 (iii) The effective rate of return to the purchasers if
31 the note is paid according to its terms.

32 (iv) The name and address of the escrow holder for the
33 transaction.

34 (v) A description of, and the estimated amount of,
35 each cost payable by the seller in connection with the sale
36 and a description of, and the estimated amount of, each
37 cost payable by the purchasers in connection with the
38 sale.

39 (B) In the case of the origination of a note:

1 (i) The name and address of the escrow holder for the
2 transaction.

3 (ii) The anticipated closing date.

4 (iii) A description of, and the estimated amount of,
5 each cost payable by the borrower in connection with the
6 loan and a description of, and the estimated amount of,
7 each cost payable by the lenders in connection with the
8 loan.

9 (2) A copy of the written statement or information
10 contained therein, as required by paragraph (2) of
11 subdivision (g), shall be included in the disclosure form.

12 (3) Any interest of the broker or affiliate in the
13 transaction, as described in subdivision (d), shall be
14 included with the disclosure form.

15 (4) When the particular circumstances of a transaction
16 make information not specified in the disclosure form
17 material or essential to keep the information provided in
18 the form from being misleading, and the other
19 information is known to the broker, the other information
20 shall also be provided by the broker.

21 (l) The broker or servicing agent shall furnish any
22 purchaser of a note or interest, upon request, with the
23 names and addresses of the purchasers of the other notes
24 or interests in the loan.

25 (m) No agreement in connection with a transaction
26 covered by this section shall grant to the real estate
27 broker, the servicing agent, or any affiliate of the broker
28 or agent the option or election to acquire the interests of
29 the purchasers or lenders or to acquire the real property
30 securing the interests. This subdivision shall not prohibit
31 the broker or affiliate from acquiring the interests, with
32 the consent of the purchasers or lenders whose interests
33 are being purchased, or the property, with the consent of
34 the purchasers or lenders, if the consent is given at the
35 time of the acquisition.

36 (n) Each broker who conducts transactions under this
37 section and meets the criteria of paragraph (3) of
38 subdivision (j) shall file with the commissioner an annual
39 report of a review of its trust account. The report shall be
40 prepared and filed in accordance with subdivision (a) of

1 Section 10232.2 and the rules and procedures thereunder
2 of the commissioner. That report shall cover the broker's
3 transactions under this section and, if the broker also
4 meets the threshold criteria set forth in Section 10232, the
5 broker's transactions subject to that section shall be
6 included as well.

7 (o) Each broker conducting transactions pursuant to
8 this section who meets the criteria of paragraph (3) of
9 subdivision (j) shall file with the commissioner a report
10 of the transactions that is prepared in accordance with
11 subdivision (c) of Section 10232.2. If the broker also meets
12 the threshold criteria of Section 10232, the report shall
13 include the transactions subject to that section as well.
14 This report shall be confidential pursuant to subdivision
15 (f) of Section 10232.2.

16 (p) The jurisdiction of the Commissioner of
17 Corporations under the Corporate Securities Law of 1968
18 shall be neither limited nor expanded by this section.
19 Nothing in this section shall be construed to supersede or
20 restrict the application of the Corporate Securities Law
21 of 1968. A transaction under this section shall not be
22 construed to be a transaction involving the issuance of
23 securities subject to authorization by the Real Estate
24 Commissioner under subdivision (e) of Section 25100 of
25 the Corporations Code.

26 (q) Nothing in this section shall be construed to
27 change the agency relationships between the parties
28 where they exist or limit in any manner the fiduciary duty
29 of brokers to borrowers, lenders, and purchasers of notes
30 or interests in transactions subject to this section.

31 *SEC. 2. Section 10232.2 of the Business and*
32 *Professions Code is amended to read:*

33 10232.2. A real estate broker who meets the criteria of
34 subdivision (a) of Section 10232 shall annually file the
35 reports referred to in subdivisions (a) and (c) with the
36 Department of Real Estate within 90 days after the end
37 of the broker's fiscal year or within such additional time
38 as the Real Estate Commissioner may allow for filing for
39 good cause:
40

(a) The report of a review by a licensed California independent public accountant of trust fund financial statements, conducted in accordance with generally accepted accounting practices, which shall include within its scope the following information for the fiscal year relative to the business activities of the broker described in subdivisions (d) and (e) of Section 10131:

(1) The receipt and disposition of all funds of others to be applied to the making of loans and the purchasing of promissory notes or real property sales contracts.

(2) The receipt and disposition of all funds of others in connection with the servicing by the broker of the accounts of owners of promissory notes and real property sales contracts including installment payments and loan or contract payoffs by obligors.

(3) A statement as of the end of the fiscal year which shall include an itemized trust fund accounting of the broker and confirmation that the trust funds are on deposit in an account or accounts maintained by the broker in a financial institution.

(b) A broker who meets the criteria of Section 10232, but who, in carrying on the activities described in subdivisions (d) and (e) of Section 10131, has not during a fiscal year, accepted for the benefit of a person to whom the broker is a trustee, any payment or remittance in a form convertible to cash by the broker, need not comply with the provisions of subdivision (a). In lieu thereof, the broker shall submit to the commissioner within 30 days after the end of the broker's fiscal year or, within such additional time as the commissioner may allow for a filing for good cause, a notarized statement under penalty of perjury on a form provided by the department attesting to the fact that the broker did not receive any trust funds in cash or convertible to cash during the fiscal year.

(c) A report of all of the following aspects of the business conducted by the broker while engaging in activities described in subdivisions (d) and (e) of Section 10131 and in Section 10131.1:

1 (1) Number and aggregate dollar amount of loan, trust
2 deed sales and real property sales contract transactions
3 negotiated.

4 (2) Number and aggregate dollar amount of
5 promissory notes and contracts serviced by the broker or
6 an affiliate of the broker.

7 (3) Number and aggregate dollar amount of late
8 payment charges, prepayment penalties and other fees or
9 charges collected and retained by the broker under
10 servicing agreements with beneficiaries and obligees.

11 (4) Default and foreclosure experience in connection
12 with promissory notes and contracts subject to servicing
13 agreements between the broker and beneficiaries or
14 obligees.

15 (5) Commissions received by the broker for services
16 performed as agent in negotiating loans and sales of
17 promissory notes and real property sales contracts.

18 (6) Aggregate costs and expenses as referred to in
19 Section 10241 paid by borrowers to the broker.

20 (d) The commissioner shall adopt regulations
21 prescribing the form and content of the report referred
22 to in subdivision (c) with appropriate categories to afford
23 a better understanding of the business conducted by the
24 broker.

25 (e) If the broker fails to file either of the reports
26 required under subdivisions (a) and (c) within the time
27 permitted herein, the commissioner may cause an
28 examination and report to be made and may charge the
29 broker one and one-half times the cost of making the
30 examination and report. *If a broker fails to pay the above*
31 *amount within 60 days of the mailing of a notice of billing,*
32 *the commissioner may suspend or revoke the broker's*
33 *license or deny renewal of the broker's license. The*
34 *suspension or denial shall remain in effect until the above*
35 *amount is paid or the broker's right to renew a license has*
36 *expired. The commissioner may maintain an action for*
37 *the recovery of the above amount in any court of*
38 *competent jurisdiction. In determining the cost incurred*
39 *by the commissioner for conducting an examination and*
preparing the report, the commissioner may use the

1 *estimated average hourly cost for all department audit*
2 *staff performing audits of real estate brokers.*

3 (f) The reports referred to in subdivisions (a) and (c)
4 are exempted from any requirement of public disclosure
5 by paragraph (2) of subdivision (d) of Section 6254 of the
6 Government Code. The commissioner shall annually
7 make and file as a public record, a composite of the annual
8 reports and any comments thereon which are deemed to
9 be in the public interest.

10 *SEC. 3. Section 10232.25 of the Business and*
11 *Professions Code is amended to read:*

12 10232.25. (a) A real estate broker who meets the
13 criteria of subdivision (a) of Section 10232 shall, within 30
14 days after the end of each of the first three fiscal quarters
15 of the broker's fiscal year, or within ~~such~~ any additional
16 time as the Real Estate Commissioner may allow for good
17 cause, file with the commissioner a trust funds status
18 report as of the last day of the fiscal quarter which shall
19 include the following:

20 (1) A representation that the form and content of the
21 trust account records of the broker are in compliance
22 with the regulations of the commissioner.

23 (2) A representation that the broker's trust fund bank
24 account is maintained in compliance with the regulations
25 of the commissioner.

26 (3) A statement of the broker's aggregate
27 accountability for trust funds.

28 (4) A report of trust funds in the broker's custody
29 consisting of the trust account bank statements as of the
30 bank's accounting date immediately preceding the end of
31 the fiscal quarter and a schedule of withdrawals and
32 deposits adjusting the account to its true balance as of the
33 end of the fiscal quarter.

34 (5) A statement explaining any difference in amount
35 between the broker's total accountability under
36 paragraph (3) above and the adjusted trust account bank
37 balance under paragraph (4) above.

38 (b) Each report made pursuant to subdivision (a) shall
39 include the following:

40

1 (1) The name, address, and position or capacity of the
2 person who prepared the report.

3 (2) A declaration under penalty of perjury by the
4 broker that the information and representations in the
5 report are true, complete, and correct to the best of the
6 broker's knowledge and belief. The declaration in a
7 report submitted on behalf of a corporate broker shall be
8 signed by a broker-officer through whom the corporation
9 is licensed as a real estate broker and by the chief
10 executive officer of the corporation if he or she is not the
11 signing broker-officer.

12 (c) If a broker fails to file a report required under
13 subdivision (a) within the time permitted, the
14 commissioner may cause an examination and report to be
15 made and may charge the broker one and one-half times
16 the cost of making the examination and report. *If a broker*
17 *fails to pay the above amount within 60 days of the mailing*
18 *of a notice of billing, the commissioner may suspend or*
19 *revoke the broker's license or deny renewal of the*
20 *broker's license. The suspension or denial shall remain in*
21 *effect until the above amount is paid or the broker's right*
22 *to renew a license has expired. The commissioner may*
23 *maintain an action for the recovery of the above amount*
24 *in any court of competent jurisdiction. In determining*
25 *the cost incurred by the commissioner for conducting an*
26 *examination and preparing the report, the commissioner*
27 *may use the estimated average hourly cost for all*
28 *department audit staff performing audits of real estate*
29 *brokers.*

30 (d) A broker who meets the criteria of Section 10232,
31 but who, in carrying on the activities described in
32 subdivisions (d) and (e) of Section 10131, did not during
33 a fiscal quarter, accept for the benefit of a person to whom
34 the broker is trustee, any payment or remittance in a
35 form convertible to cash by the broker, need not comply
36 with the provisions of subdivision (a). In lieu thereof, the
37 broker shall submit to the commissioner within 30 days
38 after the end of the fiscal quarter or within such
39 additional time as the commissioner may allow for good
40 cause, a statement under penalty of perjury on a form

provided by the department attesting to the fact that the broker did not receive any trust funds in cash or convertible to cash during the fiscal quarter.

(e) Any real estate broker who engages in any of the activities specified in subdivision (d) or (e) of Section 10131, but who is not required by this section to file trust funds status reports with the commissioner and who is not exempt therefrom under subdivision (d), shall complete trust funds status reports in accordance with either (1) the requirements of subdivisions (a) and (b) applicable to trust funds status reports filed with the commissioner, or (2) the requirements established by the lender or note owner, if the lender or note owner does all of the following: (i) requires monthly reconciliations of trust account balances; (ii) requires annual, CPA-audited financial statements; and (iii) maintains a contractual right to audit the trust accounts held by the broker on behalf of the lender or note owner.

The broker shall retain all trust funds status reports prepared under this subdivision on file at the broker's offices, where they shall be subject to inspection by representatives of the commissioner upon 24 hours' notice.

SEC. 4. Section 10232.5 of the Business and Professions Code is amended to read:

10232.5. (a) If the real estate broker is performing acts described in subdivision (d) of Section 10131 in negotiating a loan to be secured by a lien on real property or on a business opportunity, the statement required to be given to the prospective lender shall include, but shall not necessarily be limited to, the following information:

(1) Address or other means of identification of the real property that is to be the security for the borrower's obligation.

(2) Estimated fair market value of the securing property as determined by an appraisal, a copy of which shall be provided to the lender. However, a lender may waive the requirement of an independent appraisal in writing, on a case-by-case basis, in which case, the real estate broker shall provide the broker's written estimated

1 fair market value of the securing property, which shall
2 include the objective data upon which the broker's
3 estimate is based.

4 (3) Age, size, type of construction and a description of
5 improvements to the property if contained in the
6 appraisal or as represented to the broker by the
7 prospective borrower.

8 (4) Identity, occupation, employment, income, and
9 credit data about the prospective borrower or borrowers
10 as represented to the broker by the prospective borrower
11 or borrowers.

12 (5) Terms of the promissory note to be given to the
13 lender.

14 (6) Pertinent information concerning all
15 encumbrances which constitute liens against the securing
16 property and, to the extent of actual knowledge of the
17 broker, pertinent information about other loans that the
18 borrower expects or anticipates will result in a lien being
19 recorded against the property securing the promissory
20 note to be created in favor of the prospective lender.

21 As used in this paragraph, actual knowledge with
22 respect to any anticipated or expected loan, means
23 knowledge gained by the broker through arranging that
24 other loan or receipt of written notification of that other
25 loan. In this regard, the broker shall also provide to the
26 prospective lender the option to apply to purchase a title
27 insurance policy or an endorsement to an existing title
28 insurance policy covering the securing property, and a
29 copy of a written loan application, and a credit report.

30 (7) Provisions for servicing of the loan, if any,
31 including disposition of the late charge and prepayment
32 penalty fees paid by the borrower.

33 (8) Detailed information concerning any proposed
34 arrangement under which the prospective lender along
35 with persons not otherwise associated with him or her will
36 be joint beneficiaries or obligees.

37 (9) If the solicitation is subject to the provisions of
38 Section 10231.2, a detailed statement of the intended use
39 and disposition of the funds being solicited including an
40

1 explanation of the nature and extent of the benefits to be
2 directly or indirectly derived by the broker.

3 (b) If the real estate broker is performing acts
4 described in subdivision (e) of Section 10131 or in Section
5 10131.1 in negotiating the sale of a real property sales
6 contract or promissory note secured directly *or*
7 *collaterally* by a lien on real property, the statement
8 required to be given to the prospective purchaser by
9 Section 10232.4 shall include, but shall not necessarily be
10 limited to, the following information:

11 (1) Address or other means of identification of the real
12 property that is the security for the trustor's or vendee's
13 obligation.

14 (2) Estimated fair market value of the real property as
15 determined by an appraisal, a copy of which shall be
16 provided to the prospective purchaser. However, a
17 purchaser may waive the requirement of an independent
18 appraisal in writing, on a case-by-case basis, in which case,
19 the real estate broker shall provide the broker's written
20 estimated fair market value of the securing property,
21 which shall include the objective data upon which the
22 broker's estimate is based.

23 (3) Age, size, type of construction and a description of
24 improvements to the real property if known by the
25 broker.

26 (4) Information available to the broker relative to the
27 ability of the trustor or vendee to meet his or her
28 contractual obligations under the note or contract
29 including the trustor's or vendee's payment history under
30 the note or contract.

31 (5) Terms of the contract or note including the
32 principal balance owing.

33 (6) Provisions for servicing of the note or contract, if
34 any, including disposition of late charge, prepayment
35 penalty or other fees or charges paid by the trustor or
36 vendee.

37 (7) Detailed information concerning any proposed
38 arrangement under which the prospective purchaser
along with persons not otherwise associated with him or
her will be joint beneficiaries or obligees. In this regard,

1 the broker shall also provide to the prospective purchaser
2 the option to apply to purchase a title insurance policy or
3 an endorsement to an existing title insurance policy
4 covering the real property and, if available from the seller
5 of the note or contract or from the original lender, a copy
6 of a written loan application, and a credit report.

7 (8) A statement as to whether the dealer is acting as a
8 principal or as an agent in the transaction with the
9 prospective purchaser.

10 *SEC. 5. Section 2924g of the Civil Code is amended to*
11 *read:*

12 2924g. (a) All sales of property under the power of
13 sale contained in any deed of trust or mortgage shall be
14 held in the county where the property or some part
15 thereof is situated, and shall be made at auction, to the
16 highest bidder, between the hours of 9 a.m. and 5 p.m. on
17 any business day, Monday through Friday.

18 The sale shall commence at the time and location
19 specified in the notice of sale. Any postponement shall be
20 announced at the time and location specified in the notice
21 of sale for commencement of the sale or pursuant to
22 paragraph (1) of subdivision (c).

23 If the sale of more than one parcel of real property has
24 been scheduled for the same time and location by the
25 same trustee, (1) any postponement of any of the sales
26 shall be announced at the time published in the notice of
27 sale, (2) the first sale shall commence at the time
28 published in the notice of sale or immediately after the
29 announcement of any postponement, and (3) each
30 subsequent sale shall take place as soon as possible after
31 the preceding sale has been completed.

32 (b) When the property consists of several known lots
33 or parcels they shall be sold separately unless the deed of
34 trust or mortgage provides otherwise. When a portion of
35 the property is claimed by a third person, who requires
36 it to be sold separately, the portion subject to the claim
37 may be thus sold. The trustor, if present at the sale, may
38 also, unless the deed of trust or mortgage otherwise
39 provides, direct the order in which property shall be sold,
40 when the property consists of several known lots or

1 parcels which may be sold to advantage separately, and
2 the trustee shall follow that direction. After sufficient
3 property has been sold to satisfy the indebtedness no
4 more can be sold.

5 If the property under power of sale is in two or more
6 counties the public auction sale of all of the property
7 under the power of sale may take place in any one of the
8 counties where the property or a portion thereof is
9 located.

10 (c) (1) There may be a postponement of the sale
11 proceedings at any time prior to the completion of the
12 sale at the discretion of the trustee, or upon instruction by
13 the beneficiary to the trustee that the sale proceedings be
14 postponed.

15 There may be a maximum of three postponements of
16 the sale proceedings pursuant to this subdivision. In the
17 event that the sale proceedings are postponed more than
18 three times, the scheduling of any further sale
19 proceedings shall be preceded by the giving of a new
20 notice of sale in the manner prescribed by Section 2924f.

21 (2) The trustee shall postpone the sale upon the order
22 of any court of competent jurisdiction, or where stayed by
23 operation of law, or by the mutual agreement, whether
24 oral or in writing, of any trustor and any beneficiary or
25 any mortgagor and any mortgagee. Any postponement
26 pursuant to this paragraph shall not be a postponement
27 for purposes of determining the maximum number of
28 postponements permitted pursuant to this subdivision
29 nor shall a postponement resulting from the prohibition
30 upon a sale within seven days from the expiration of an
31 injunction, restraining order, or stay as provided in
32 subdivision (d) be deemed a postponement for purposes
33 of this subdivision. In addition, one postponement by the
34 trustee based upon a reasonable belief that a petition for
35 bankruptcy has been filed shall not be a postponement for
36 purposes of determining the maximum number of
37 postponements permitted pursuant to this subdivision.

38 (d) The notice of each postponement and the reason
39 therefor shall be given by public declaration by the
40 trustee at the time and place last appointed for sale. A

1 public declaration of postponement shall also set forth the
2 new date, time, and place of sale and the place of sale shall
3 be the same place as originally fixed by the trustee for the
4 sale. No other notice of postponement need be given.
5 However, the sale shall be conducted no sooner than on
6 the seventh day after the earlier of (1) dismissal of the
7 action or (2) expiration or termination of the injunction,
8 restraining order, or stay (which required postponement
9 of the sale), whether by entry of an order by a court of
10 competent jurisdiction, operation of law, or otherwise,
11 unless the injunction, restraining order, or subsequent
12 order expressly directs the conduct of the sale within that
13 seven-day period. For purposes of this subdivision, the
14 seven-day period shall not include the day on which the
15 action is dismissed, or the day on which the injunction,
16 restraining order, or stay expires or is terminated. If the
17 sale had been scheduled to occur, but this subdivision
18 precludes its conduct during that seven-day period, a new
19 notice of postponement shall be given if the sale had been
20 scheduled to occur during that seven-day period. The
21 trustee shall maintain records of each postponement and
22 the reason therefor.

23 *(e) Notwithstanding the time periods established*
24 *under subdivision (d), the sale shall be conducted no*
25 *sooner than the expiration of a stay granted under Title*
26 *11 of the United States Code (Bankruptcy).*

27 *SEC. 6. Section 2924j of the Civil Code is amended to*
28 *read:*

29 2924j. (a) Unless an interpleader action has been
30 filed, within 30 days of the execution of the trustee's deed
31 resulting from a sale in which there are proceeds
32 remaining after payment of the amounts required by
33 paragraphs (1) and (2) of subdivision (a) of Section
34 2924k, the trustee shall send written notice to all persons
35 with recorded interests in the real property as of the date
36 immediately prior to the trustee's sale who would be
37 entitled to notice pursuant to subdivisions (b) and (c) of
38 Section 2924b. The notice shall be sent by first-class mail
39 ~~in the manner provided in paragraph (1) of subdivision~~

~~(c) of Section 2924b~~ and inform each entitled person of each of the following:

(1) That there has been a trustee's sale of the described real property.

(2) That the noticed person may have a claim to all or a portion of the sale proceeds remaining after payment of the amounts required by paragraphs (1) and (2) of subdivision (a) of Section 2924k.

(3) The noticed person may contact the trustee at the address provided in the notice to pursue any potential claim.

(4) That before the trustee can act, the noticed person may be required to present proof that the person holds the beneficial interest in the obligation and the security interest therefor. In the case of a promissory note secured by a deed of trust, proof that the person holds the beneficial interest may include the original promissory note and assignment of beneficial interests related thereto. The noticed person shall also submit a written claim to the trustee, executed under penalty of perjury, stating the following:

(A) The amount of the claim to the date of trustee's sale.

(B) An itemized statement of the principal, interest, and other charges.

(C) That claims must be received by the trustee at the address stated in the notice no later than 30 days after the date the trustee sends notice to the potential claimant.

(b) The trustee shall exercise due diligence to determine the priority of the written claims received by the trustee to the trustee's sale surplus proceeds from those persons to whom notice was sent pursuant to subdivision (a). In the event there is no dispute as to the priority of the written claims submitted to the trustee, proceeds shall be paid within 30 days after the conclusion of the notice period. If the trustee has failed to determine the priority of written claims within 90 days following the 30-day notice period, then within 10 days thereafter the trustee shall deposit the funds with the clerk of the court pursuant to subdivision (c) or file an interpleader action

1 pursuant to subdivision (e). Nothing in this section shall
2 preclude any person from pursuing other remedies or
3 claims as to surplus proceeds.

4 (c) If, after due diligence, the trustee is unable to
5 determine the priority of the written claims received by
6 the trustee to the trustee's sale surplus of multiple persons
7 or if the trustee determines there is a conflict between
8 potential claimants, the trustee may file a declaration of
9 the unresolved claims and deposit with the clerk of the
10 superior or municipal court, as applicable, of the county
11 in which the sale occurred, that portion of the sales
12 proceeds that cannot be distributed, less any fees charged
13 by the clerk pursuant to this subdivision. The declaration
14 shall specify the date of the trustee's sale, a description of
15 the property, the names and addresses of all persons sent
16 notice pursuant to subdivision (a), a statement that the
17 trustee exercised due diligence pursuant to subdivision
18 (b), that the trustee provided written notice as required
19 by subdivisions (a) and (d) and the amount of the sales
20 proceeds deposited by the trustee with the superior or
21 municipal court. Further, the trustee shall submit a copy
22 of the trustee's sales guarantee and any information
23 relevant to the identity, location, and priority of the
24 potential claimants with the superior or municipal court
25 and shall file proof of service of the notice required by
26 subdivision (d) on all persons described in subdivision
27 (a).

28 The clerk shall deposit the amount with the county
29 treasurer subject to order of the superior or municipal
30 court upon the application of any interested party. The
31 clerk may charge a reasonable fee for the performance of
32 activities pursuant to this subdivision equal to the fee for
33 filing an interpleader action pursuant to Article 2
34 (commencing with Section 26820) of Division 2 of Title
35 3 of the Government Code. Upon deposit of that portion
36 of the sale proceeds that cannot be distributed by due
37 diligence, the trustee shall be discharged of further
38 responsibility for the disbursement of sale proceeds. A
39 deposit with the clerk of the superior or municipal court
40 pursuant to this subdivision may be either for the total

1 proceeds of the trustee's sale, less any fees charged by the
2 clerk, if a conflict or conflicts exist with respect to the total
3 proceeds, or that portion that cannot be distributed after
4 due diligence, less any fees charged by the clerk.

5 (d) Before the trustee deposits the funds with the
6 clerk of the court pursuant to subdivision (c), the trustee
7 shall send written notice by first-class mail, postage
8 prepaid, to all persons described in subdivision (a)
9 informing them that the trustee intends to deposit the
10 funds with the clerk of the superior or municipal court,
11 as applicable, and that a claim for the funds must be filed
12 with the court within 30 days from the date of the notice,
13 providing the address of the court in which the funds
14 were deposited, and a phone number for obtaining
15 further information.

16 Within 90 days after deposit with the clerk, the court
17 shall consider all claims filed at least 15 days before the
18 date on which the hearing is scheduled by the court, the
19 clerk shall serve written notice of the hearing by first-class
20 mail on all claimants identified in the trustees' declaration
21 at the addresses specified therein. The court shall
22 distribute the deposited funds to any and all claimants
23 entitled thereto.

24 (e) Nothing in this section restricts the ability of a
25 trustee to file an interpleader action in order to resolve
26 a dispute about the proceeds of a trustee's sale. Once an
27 interpleader action has been filed, thereafter the
28 provisions of this section shall not apply.

29 (f) "Due diligence," for the purposes of this section
30 means that the trustee researched the written claims
31 submitted or other evidence of conflicts and determined
32 that a conflict of priorities exists between two or more
33 claimants which the trustee is unable to resolve.

34 (g) To the extent required by the Unclaimed Property
35 Law, a trustee in possession of surplus proceeds not
36 required to be deposited with the court pursuant to
37 subdivision (b) shall comply with the Unclaimed
38 Property Law (Chapter 7 (commencing with Section
39 1500) of Title 10 of Part 3 of the Code of Civil Procedure).

40

1 (h) Prior to July 1, 2000, the Judicial Council shall
2 adopt a form to accomplish the filing authorized by this
3 section.

4 *SEC. 7.* Section 2941 of the Civil Code is amended to
5 read:

6 2941. (a) Within 30 days after any mortgage has been
7 satisfied, the mortgagee or the assignee of the mortgagee
8 shall execute a certificate of the discharge thereof, as
9 provided in Section 2939, and shall record or cause to be
10 recorded, except as provided in subdivision (c), in the
11 office of the county recorder in which the mortgage is
12 recorded. The mortgagee shall then deliver, upon the
13 written request of the mortgagor or the mortgagor's
14 heirs, successors, or assignees, as the case may be, the
15 original note and mortgage to the person making the
16 request.

17 (b) (1) When the obligation secured by any deed of
18 trust has been satisfied, the beneficiary or the assignee of
19 the beneficiary shall execute and deliver to the trustee
20 the original note, deed of trust, request for a full
21 reconveyance, and other documents as may be necessary
22 to reconvey, or cause to be reconveyed, the deed of trust.

23 (A) The trustee shall execute the full reconveyance
24 and shall record or cause it to be recorded, except as
25 provided in subdivision (c), in the office of the county
26 recorder in which the deed of trust is recorded within 21
27 calendar days after receipt by the trustee of the original
28 note, deed of trust, request for a full reconveyance, the
29 fee that may be charged pursuant to subdivision ~~(e)~~ (f),
30 recorder's fees, and other documents as may be necessary
31 to reconvey, or cause to be reconveyed, the deed of trust.

32 (B) The trustee shall deliver a copy of the
33 reconveyance to the beneficiary, its successor in interest,
34 or its servicing agent, if known.

35 (C) Following execution and recordation of the full
36 reconveyance, upon receipt of a written request by the
37 trustor or the trustor's heirs, successors, or assignees, the
38 trustee shall then deliver the original note and deed of
39 trust to the person making that request.

40

(2) If the trustee has failed to execute and record, or cause to be recorded, the full reconveyance within 60 calendar days of satisfaction of the obligation, the beneficiary, upon receipt of a written request by the trustor or trustor's heirs, successor in interest, agent, or assignee, shall execute and acknowledge a document pursuant to Section 2934a substituting itself or another as trustee and issue a full reconveyance.

(3) If a full reconveyance has not been executed and recorded pursuant to either paragraph (1) or paragraph (2) within 75 calendar days of satisfaction of the obligation, then a title insurance company may prepare and record a release of the obligation. However, at least 10 days prior to the issuance and recording of a full release pursuant to this paragraph, the title insurance company shall mail by first-class mail with postage prepaid, the intention to release the obligation to the trustee, trustor, and beneficiary of record, or their successor in interest of record, at the last known address.

(A) The release shall set forth all of the following:

(i) The name of the beneficiary.

(ii) The name of the trustor.

(iii) The recording reference to the deed of trust.

(iv) A recital that the obligation secured by the deed of trust has been paid in full.

(v) The date and amount of payment.

(B) The release issued pursuant to this subdivision shall be entitled to recordation and, when recorded, shall be deemed to be the equivalent of a reconveyance of a deed of trust.

(4) Where an obligation secured by a deed of trust was paid in full prior to July 1, 1989, and no reconveyance has been issued and recorded by October 1, 1989, then a release of obligation as provided for in paragraph (3) may be issued.

(5) Paragraphs (2) and (3) do not excuse the beneficiary or the trustee from compliance with paragraph (1). Paragraph (3) does not excuse the beneficiary from compliance with paragraph (2).

1 (6) In addition to any other remedy provided by law,
2 a title insurance company preparing or recording the
3 release of the obligation shall be liable to any party for
4 damages, including attorneys' fees, which any person
5 may sustain by reason of the issuance and recording of the
6 release, pursuant to paragraphs (3) and (4).

7 (c) The mortgagee or trustee shall not record or cause
8 the certificate of discharge or full reconveyance to be
9 recorded when any of the following circumstances exists:

10 (1) The mortgagee or trustee has received written
11 instructions to the contrary from the mortgagor or
12 trustor, or the owner of the land, as the case may be, or
13 from the owner of the obligation secured by the deed of
14 trust or his or her agent, or escrow.

15 (2) The certificate of discharge or full reconveyance is
16 to be delivered to the mortgagor or trustor, or the owner
17 of the land, as the case may be, through an escrow to
18 which the mortgagor, trustor, or owner is a party.

19 (3) When the personal delivery is not for the purpose
20 of causing recordation and when the certificate of
21 discharge or full reconveyance is to be personally
22 delivered with receipt acknowledged by the mortgagor
23 or trustor or owner of the land, as the case may be, or their
24 agent if authorized by mortgagor or trustor or owner of
25 the land.

26 (d) *As used in this section, the phrases "cause it to be*
27 *recorded" and "cause to be recorded" shall include, but*
28 *not be limited to, depositing in the United States mail*
29 *with first-class postage prepaid a deed of full*
30 *reconveyance in recordable form together with all*
31 *required fees in an envelope addressed to the county*
32 *recorder's office of the county in which the deed of trust*
33 *is recorded. Compliance with this subdivision shall entitle*
34 *the trustee to the presumptions set forth in Sections 641*
35 *and 642 of the Evidence Code.*

36 (e) The violation of this section shall make the violator
37 liable to the person affected by the violation for all
38 damages which that person may sustain by reason of the
39 violation, and shall require that the violator forfeit to that
40 person the sum of three hundred dollars (\$300).

1 However, a trustee acting in accordance with subdivision
2 (c) shall not be deemed a violator for purposes of this
3 subdivision.

4 ~~(e)~~

5 (f) (1) The trustee, beneficiary, or mortgagee may
6 charge a reasonable fee to the trustor or mortgagor, or the
7 owner of the land, as the case may be, for all services
8 involved in the preparation, execution, and recordation
9 of the full reconveyance, including, but not limited to,
10 document preparation and forwarding services rendered
11 to effect the full reconveyance, and, in addition, may
12 collect official fees. This fee may be made payable no
13 earlier than the opening of a bona fide escrow or no more
14 than 60 days prior to the full satisfaction of the obligation
15 secured by the deed of trust or mortgage.

16 (2) If the fee charged pursuant to this subdivision does
17 not exceed sixty-five dollars (\$65), the fee is conclusively
18 presumed to be reasonable.

19 (3) If a fee is charged pursuant to this subdivision, the
20 fee shall be held in escrow until the reconveyance has
21 been executed and recorded.

22 ~~(f)~~

23 (g) For purposes of this section, “original” may
24 include an optically imaged reproduction when the
25 following requirements are met:

26 (1) The trustee receiving the request for
27 reconveyance and executing the reconveyance as
28 provided in subdivision (b) is an affiliate or subsidiary of
29 the beneficiary or an affiliate or subsidiary of the assignee
30 of the beneficiary, respectively.

31 (2) The optical image storage media used to store the
32 document shall be nonerasable write once, read many
33 (WORM) optical image media that does not allow
34 changes to the stored document.

35 (3) The optical image reproduction shall be made
36 consistent with the minimum standards of quality
37 approved by either the National Institute of Standards
38 and Technology or the Association for Information and
39 Image Management.

(4) Written authentication identifying the optical image reproduction as an unaltered copy of the note, deed of trust, or mortgage shall be stamped or printed on the optical image reproduction.

SEC. 8. Section 2943 of the Civil Code is amended to read:

2943. (a) As used in this section:

(1) “Beneficiary” means a mortgagee or beneficiary of a mortgage or deed of trust, or his or her assignees.

(2) “Beneficiary statement” means a written statement showing:

(A) The amount of the unpaid balance of the obligation secured by the mortgage or deed of trust and the interest rate, together with the total amounts, if any, of all overdue installments of either principal or interest, or both.

(B) The amounts of periodic payments, if any.

(C) The date on which the obligation is due in whole or in part.

(D) The date to which real estate taxes and special assessments have been paid to the extent the information is known to the beneficiary.

(E) The amount of hazard insurance in effect and the term and premium of that insurance to the extent the information is known to the beneficiary.

(F) The amount in an account, if any, maintained for the accumulation of funds with which to pay taxes and insurance premiums.

(G) The nature and, if known, the amount of any additional charges, costs, or expenses paid or incurred by the beneficiary which have become a lien on the real property involved.

(H) Whether the obligation secured by the mortgage or deed of trust can or may be transferred to a new borrower.

(3) “Delivery” means depositing or causing to be deposited in the United States mail an envelope with postage prepaid, containing a copy of the document to be delivered, addressed to the person whose name and address is set forth in the demand therefor. The

1 document may also be transmitted by facsimile machine
2 to the person whose name and address is set forth in the
3 demand therefor.

4 (4) "Entitled person" means the trustor or mortgagor
5 of, or his or her successor in interest in, the mortgaged or
6 trust property or any part thereof, any beneficiary under
7 a deed of trust, any person having a subordinate lien or
8 encumbrance of record thereon, the escrow holder
9 licensed as an agent pursuant to Division 6 (commencing
10 with Section 17000) of the Financial Code, or the party
11 exempt by virtue of Section 17006 of the Financial Code
12 who is acting as the escrow holder.

13 (5) "Payoff demand statement" means a written
14 statement, prepared in response to a written demand
15 made by an entitled person or authorized agent, setting
16 forth the amounts required as of the date of preparation
17 by the beneficiary, to fully satisfy all obligations secured
18 by the loan that is the subject of the payoff demand
19 statement. The written statement shall include
20 information reasonably necessary to calculate the payoff
21 amount on a per diem basis for the period of time, not to
22 exceed 30 days, during which the per diem amount is not
23 changed by the terms of the note.

24 (b) (1) A beneficiary, or his or her authorized agent,
25 shall, within 21 days of the receipt of a written demand by
26 an entitled person or his or her authorized agent, prepare
27 and deliver to the person demanding it a true, correct,
28 and complete copy of the note or other evidence of
29 indebtedness with any modification thereto, and a
30 beneficiary statement.

31 (2) A request pursuant to this subdivision may be
32 made by an entitled person or his or her authorized agent
33 at any time before, or within two months after, the
34 recording of a notice of default under a mortgage or deed
35 of trust, or may otherwise be made more than 30 days
36 prior to the entry of the decree of foreclosure.

37 (c) A beneficiary, or his or her authorized agent, shall,
38 on the written demand of an entitled person, or his or her
39 authorized agent, prepare and deliver a payoff demand
40 statement to the person demanding it within 21 days of

1 the receipt of the demand. However, if the loan is subject
2 to a recorded notice of default or a filed complaint
3 commencing a judicial foreclosure, the beneficiary shall
4 have no obligation to prepare and deliver this statement
5 as prescribed unless the written demand is received prior
6 to the first publication of a notice of sale or the notice of
7 the first date of sale established by a court.

8 (d) (1) A beneficiary statement or payoff demand
9 statement may be relied upon by the entitled person or
10 his or her authorized agent in accordance with its terms,
11 including with respect to the payoff demand statement
12 reliance for the purpose of establishing the amount
13 necessary to pay the obligation in full. If the beneficiary
14 notifies the entitled person or his or her authorized agent
15 of any amendment to the statement, then the amended
16 statement may be relied upon by the entitled person or
17 his or her authorized agent as provided in this subdivision.

18 (2) If notification of any amendment to the statement
19 is not given in writing, then a written amendment to the
20 statement shall be delivered to the entitled person or his
21 or her authorized agent no later than the next business
22 day after notification.

23 (3) Upon the dates specified in subparagraphs (A) and
24 (B) any sums that were due and for any reason not
25 included in the statement or amended statement shall
26 continue to be recoverable by the beneficiary as an
27 unsecured obligation of the obligor pursuant to the terms
28 of the note and existing provisions of law.

29 (A) If the transaction is voluntary, the entitled party
30 or his or her authorized agent may rely upon the
31 statement or amended statement upon the earlier of (i)
32 the close of escrow, (ii) transfer of title, or (iii)
33 recordation of a lien.

34 (B) If the loan is subject to a recorded notice of default
35 or a filed complaint commencing a judicial foreclosure,
36 the entitled party or his or her authorized agent may rely
37 upon the statement or amended statement upon the
38 acceptance of the last and highest bid at a trustee's sale
39 or a court supervised sale.

40

(e) The following provisions apply to a demand for either a beneficiary statement or a payoff demand statement:

(1) ~~Where~~—If an entitled person or his or her authorized agent requests a statement pursuant to this section and does not specify a beneficiary statement or a payoff demand statement the beneficiary shall treat the request as a request for a payoff demand statement.

(2) ~~Where~~—If the entitled person or the entitled person's authorized agent includes in the written demand a specific request for a copy of the deed of trust or mortgage, it shall be furnished with the written statement at no additional charge.

(3) The beneficiary may, before delivering a statement, require reasonable proof that the person making the demand is, in fact, an entitled person or an authorized agent of an entitled person, in which event the beneficiary shall not be subject to the penalties of this section until 21 days after receipt of the proof herein provided for. A statement in writing signed by the entitled person appointing an authorized agent when delivered personally to the beneficiary or delivered by registered return receipt mail shall constitute reasonable proof as to the identity of an agent. Similar delivery of a policy of title insurance, preliminary report issued by a title company, original or photographic copy of a grant deed or certified copy of letters testamentary, guardianship, or conservatorship shall constitute reasonable proof as to the identity of a successor in interest, provided the person demanding a statement is named as successor in interest in the document.

(4) If a beneficiary for a period of 21 days after receipt of the written demand willfully fails to prepare and deliver the statement, he or she is liable to the entitled person for all damages which he or she may sustain by reason of the refusal and, whether or not actual damages are sustained, he or she shall forfeit to the entitled person the sum of three hundred dollars (\$300). Each failure to prepare and deliver the statement, occurring at a time when, pursuant to this section, the beneficiary is required

1 to prepare and deliver the statement, creates a separate
2 cause of action, but a judgment awarding an entitled
3 person a forfeiture, or damages and forfeiture, for any
4 failure to prepare and deliver a statement bars recovery
5 of damages and forfeiture for any other failure to prepare
6 and deliver a statement, with respect to the same
7 obligation, in compliance with a demand therefor made
8 within six months before or after the demand as to which
9 the award was made. For the purposes of this subdivision,
10 “willfully” means an intentional failure to comply with
11 the requirements of this section without just cause or
12 excuse.

13 (5) If the beneficiary has more than one branch, office,
14 or other place of business, then the demand shall be made
15 to the branch or office address set forth in the payment
16 billing notice or payment book, and the statement, unless
17 it specifies otherwise, shall be deemed to apply only to the
18 unpaid balance of the single obligation named in the
19 request and secured by the mortgage or deed of trust
20 which is payable at the branch or office whose address
21 appears on the aforesaid billing notice or payment book.

22 (6) The beneficiary may make a charge not to exceed
23 sixty dollars (\$60) for furnishing each required statement.
24 The provisions of this paragraph shall not apply to
25 mortgages or deeds of trust insured by the Federal
26 Housing Administrator or guaranteed by the
27 Administrator of Veterans Affairs.

28 *(f) The preparation and delivery of a beneficiary*
29 *statement or a payoff demand statement pursuant to this*
30 *section shall not change a date of sale established*
31 *pursuant to Section 2924g.*

32 *SEC. 9. Section 17320 of the Financial Code is*
33 *amended to read:*

34 17320. Fidelity Corporation shall establish and
35 maintain the following funds for payment of claims and
36 for payment of costs of administration: the membership
37 fund, the operations fund, and the fidelity fund.

38 (a) An applicant or a licensee shall, at the time an
39 application is filed for a license, pay to Fidelity
40 Corporation a membership fee of three thousand dollars

1 (\$3,000) for each location for which a license is applied.
 2 If the application is denied, withdrawn, or abandoned,
 3 Fidelity Corporation may retain two hundred dollars
 4 (\$200) from the membership fee to cover costs of
 5 administration.

6 (1) The membership fund shall be reserved for
 7 payment of claims which exceed the fidelity fund balance
 8 and for payment of extraordinary operational costs.

9 (2) Any member who, on the effective date of this
 10 section, has an account balance which exceeds the three
 11 thousand dollars (\$3,000) membership fee times the
 12 number of its licensed locations shall be credited in a
 13 special reserve account for the excess amount. This
 14 balance shall be credited against future assessments made
 15 pursuant to subdivision (b) of Section 17321 in an amount
 16 not exceeding four hundred dollars (\$400) per licensed
 17 location per year. Any member whose account balance is
 18 less than three thousand dollars (\$3,000) times the
 19 number of its licensed locations shall, on or before
 20 December 1, 1988, pay to Fidelity Corporation an amount
 21 sufficient to allow the member's account to be
 22 maintained at three thousand dollars (\$3,000) times the
 23 number of licensed locations. Fidelity Corporation shall
 24 provide each member with an accounting of the amounts
 25 being reserved for the members' membership account
 26 and amounts being held as a special reserve.

27 (3) The membership fee, less any unpaid assessments
 28 and related costs, shall be refunded to the member in
 29 accordance with Fidelity Corporation's bylaws not less
 30 than 30 months and no more than 36 months after the
 31 effective date of surrender of a license.

32 (4) *Any member who does not engage in escrow*
 33 *transactions pursuant to subdivision (c) of Section 17312*
 34 *may terminate its membership in Fidelity Corporation by*
 35 *written notice to Fidelity Corporation and the*
 36 *Department of Corporations, as provided in the Fidelity*
 37 *Corporation's bylaws and rules and regulations. The*
 38 *membership fee, less any unpaid assessments and related*
 39 *costs, shall be refunded to the member in accordance*
 40 *with Fidelity Corporation's bylaws not less than 30*

1 months and no more than 36 months after the effective
2 date of the member's written request to terminate its
3 membership in Fidelity Corporation. If the licensee
4 thereafter resumes those escrow transactions, it shall be
5 required to reapply for Fidelity Corporation
6 membership, as provided in this subdivision.

7 (b) Fidelity Corporation shall prepare, prior to its
8 fiscal year end, an estimated annual operational budget
9 projecting the costs of operations and administration for
10 the succeeding fiscal year, excluding the amount paid for
11 claims and premiums paid for excess coverage bonding.
12 The amount of the assessment shall be 150 percent of the
13 budgetary projection. In succeeding years, the
14 assessment shall be adjusted by adding the prior year's
15 deficit or deducting unused surplus from the prior year.

16 (c) Fidelity Corporation shall establish a fidelity fund
17 for the payment of claims and for the payment of the
18 premium for the fidelity bond or insurance policy, if any.
19 All claims shall be paid from the fidelity fund, provided
20 that, to the extent that the fidelity fund balance is not
21 sufficient to pay claims, the claim shall be paid from the
22 membership fund by charging each member's
23 membership account a pro rata share of the excess.

24 (d) All interest earned on the membership fund and
25 the operations fund shall be credited to the fidelity fund.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.